

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No. C- 08-5292 MHP

JOHNNY REED,

Petitioner,

vs.

MICHAEL D. McDONALD, Warden

Respondent.

**ORDER DENYING  
CERTIFICATE OF  
APPEALABILITY**

The petition in this matter was filed on November 21, 2008, shortly after which petitioner's motion to stay the proceedings was granted. On October 15, 2009, petitioner moved to reopen this case and that motion was granted. Thereafter, petitioner received two extensions of time to file an amended petition. The second grant extended his time to file to September 30, 2010. As of May 13, 2011, no amended petition had been filed and no further inquiry or communication from petitioner or his attorney was received. Therefore, this court dismissed the petition for lack of prosecution. A subsequent motion for reconsideration was denied. The dismissal was without prejudice to the filing of a new petition.

The history of this case, in which petitioner is represented by counsel, is a history of defalcations. The attached order relating to the second extension of time is an example of this history. *See* Order, filed 2/3/10, Dkt. #13.

For the above reasons this court denies a certificate of appealability. A certificate of appealability will not issue because petitioner has not made "a substantial showing of the denial of a

1 constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner is free to file a new petition. This is not a  
2 case in which "reasonable jurists would find the district court's assessment of the constitutional  
3 claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

4 IT IS SO ORDERED.

5  
6 Date: June 20, 2011

  
MARILYN HALL PATEL  
United States District Court Judge  
Northern District of California